IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7740 OF 2003

1. State of Maharashtra
   through Principal Secretary (Forest)
   Revenue & Forests Department,
   Govt. of Maharashtra,
   Mantralaya, Mumbai.

2. State of Maharashtra
   Law & Judiciary Deptt.
   Govt. of Maharashtra,
   Mantralaya, Mumbai.

3. Union of India
   through Secretary,
   Ministry of Environment &
   Forests, Govt. of India
   Paryavaran Bhawan,
   C.G.O. Complex,
   Lodhi Road, New Delhi.

4. Union Public Service Commission
   through Secretary,
   Dholpur House,
   Shahajahan Road,
   New Delhi.

5. Shri D.R.Joshi
   Then Special Govt. Counsel,
   Before M.R.T.
   through Secretary,
   Law & Judiciary Department,
   Govt. of Maharashtra,
   Mantralaya, Mumbai. ..Petitioners

Versus

Shri Ravendra Mohan Dayal
Conservator of Forests
101, Hill View,
15, Lulla Nagar,
Pune-411 040. ..Respondent

Mr.R.M.Kadam Advocate General alongwith
Mr.S.R.Nargolkar AGP for the petitioners.

Mr.S.P.Saxena for the Respondent.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 12.4.2005.

Oral Judgment :- (Per : R.M.Lodha,J)

. Rule. Returnable forthwith.

2. Looking to the controversy involved in the Writ petition, we are satisfied that rule deserves to be heard forthwith. We proceed accordingly.

3. The respondent belongs to IFS Cadre. Disciplinary enquiry against him under Rule 8 of All India Services (Discipline and Appeal) Rules 1969 has been instituted. The articles of charge and statement of imputation of mis-conduct in support of article of charges framed by the respondent read thus :-

Article I

Shri R.M.Dayal, while working as Deputy Conservator of Forests, Alibag from the period (June 87 to July 1991) submitted a false report regarding status of forest vegetation in Maharashtra revenue Tribunal in respects of private forest land belonging to Ibrahim Mohamad Maqaba suo

moto in the court. Further Shri R.M.Dayal prepared a favourable report in favour of party while seeking the opinion of Additional Government Pleader for filing writ petition in High Court, resulted loss of about 570 acres of forest lands worth crores of rupees. Further Sri Dayal has given letter without authority to party. That Government has no right over the property with ulterior motive to help Sri Maqba to retain to 570 acre of land, while at that time the land was under the possession of forest department. Thus he violated sub rule (1) of Rule 3 All India Services (conduct) Rules, 1968.

Article II

Shri R.M.Dayal, while as Dy.C.F., Alibaug permitted the construction of a road to a private party through forest without approval of Government of India. Thus violated section 2 of Forest Conservation Act 1980 and liable for punishment of simple imprisonment for a period, which may extend to 15 days under section 3 A of Forest Conservation Act 1980. Thereby he violated sub rule (1) of Rule 3 All India Services (Conduct) Rules, 1968.

Statement of imputation of misconduct or misbehaviour in support of article of charges framed against Shri R.M.Daval, the then Deputy conservator of Forests, Alibaug.

ANNEXURE II

In the year 1960 the notification under section 35(3) was issued through Notice No.K 3590 for the 570 acres of land belonging to Mohamad Ibrahim Maqaba and family was notified in the government gazette in December 1960. Latter the said land was notified under section 35(I) of I.F.A. in the year 1962 and published on May 3, 1962 in Government Gazette. In the year 1975 Maharashtra Private Forest Acquisition Act was promulgated as per section 2 of the said act these land came to be known as P.F. (Private Forest) on account of notification issued in case of land under section 35 (1) of Indian Forest Act.

1. As per section 3 of Private Forest Act, 1975, these lands vested with

Government from 30th August 1975 as deemed forest. This case was referred to assistant Collectors under section 6 of Private Forest Acquisition Act to determine whether under the Act the said land was private forest or not. Assistant Collector, Panvel issued an order dated 28/3/88 saying, that the said land was private forest and acquired as Private Forest. The owner preferred an appeal against the order of Assistant Collector before M.R.T.(Maharashtra Revenue Tribunal), M.R.T. passed an order in December 1988 and set aside the order of assistant Collector, Panvel on following grounds :-

i. The notice K 3590 under section 35(3), though issued were not served to owners.

ii. The photograph whichever was presented to MRT did not show tree growth on the said land.

ii. The D.F.O. gave a letter to Special Government Pleader which was submitted to the court by the Government Pleader stated that lands in question does not have tree but some kind of shrubs.

The said land was inspected by R.F.O. at the instance of Sri Joshi, The Government Pleader on 18/12/88. Shri Joshi visited the site of land accompanied by the local R.F.O. and asked him to send the giving the nature of land on 23/12/88 which was the day of hearing of case before M.R.T. on that day Shri Dayal and R.F.O. were in Bombay and Shri Dayal obtained report from R.F.O. and on the basis of such report Deputy Conservator of Forest's Accountant Shri Thakur, at Bombay prepared a report addressed to Government Pleader in his hand writing which was signed by Shri Dayal in Bombay and handed over it to Shri Joshi, the manner and haste in which report was prepared about such an important case, concerning 570 acres of lands worth crores of rupees clearly indicates Shri Dayal intent to favour the party with ulterior motive. It is understood being D.F.O. and working as Forest officer since last so many year, how could the vegetation be judged by the R.F.O. and Shri Dayal could rely totally upon him while submitting the report, which was not prepared by Shri Dayal personally. This report of Shri Dayal

resulted in the loss to the Government property and losing the case (ACB report, 21st June 1995) in M.R.T. It was necessary to file writ petition/appeal in the High Court to save the interest of the Government concerning the said 570 acres of land but Shri Dayal did not file the writ petition, on the basis of letter dated 9/1/1991 issued by J.S.(L&J Dept.) who had specifically given the instruction to Shri Dayal vide letter mentioned, to file writ petition the court in addition to this on dated 16/1/1991 Joint Secretary Revenue and Forest Department Shri Khedkar also directed to Shri Dayal to file writ petition in the court on the basis of letter dated 9/1/1991 of law and judiciary Department. However Shri Dayal had written directly to the L.& J. Department (Copy of Revenue and Forest Department), with intention to help Sri Maqba giving his opinion that in this case appeal was not feasible, with respect to status and ownership of the land against the decision of Maharashtra Revenue Tribunal. On the basis of letter of Shri Dayal L & J.Department confirmed the view of Shri Dayal by letter dated 10/1/1991. Further Shri Dayal kept Forest Department in dark

and took the decision to file writ petition suo moto on the basis of letter dated 10/1/1991 only for compensation part and ignored the letter dated 9/1/91 issued from Revenue and Forest Department to file writ petition in respect of 570 acres of land. Mr.Dayal has not produced issued under section 35(1) and notices under section 35(3), while it was available in his office, non serving of notice before M.R.T. has been one of the major reason for the order of the court going against the Government.

3. Shri Dayal had given letter to the party that Government has no right over the property, with ulterior motive to help Shri Maqba to retain 570 acres of land. Actually at this time the land was under the possession of Forest Department. In such circumstances permission for transfer the ownership of the land is required from the Government of India and State Government but Shri Dayal without getting the permission from government of India and State Government transferred of the ownership of the land to party, later such letter was withdrawn by his successor D.C.F. Shri Chaddha. Further Shri Dayal

did not act according to instructions of the Government of Maharashtra issued on dt.17/12/1980 such circular clearly states that the possession of Private Forest of land restored by the competent authority after 25/10/1980 shall not be given to the owner without prior approval of Government of India. The report that was prepared by Shri Dayal, seeking the opinion of Additional Government Pleader for filing the writ petition in the High Court against the order of Maharashtra Government Tribunal regarding treating these 570 acres lands as non forest with ulterior motive to help Shri Maqba, while legal status of said land was very clear as it was a forest land at that time since in this regard notification under section 35(3) has already been published in Official Gazette and served to the party and finally declared as Private Forests & vested in the Government. Shri R.M.Dayal has further mentioned in his report that even if the land is treated as forest, the land will be returned to land owners under section 22 of the Act, which states if the total holding of a person is less then 12 hectares. The land up to 12 hectares shall be returned to the owners. But it

is not understood on what basis he has decided that all the land owners were not having any other land anywhere in Maharashtra except the land in question. Further he has not appreciated the use of land where it is returned under section 22(A) and when it is declared as non forest under section 6, the status of the land remain forest and no non forest activities can be undertaken i.e. when the land is returned under 22 A only the ownership change from government to Private while under section 6 land can also be used for any other purpose. As a forest officer it was his duty being trustee of forest land, to recommend for filing writ petition in the High Court even though malafide action. ACB enquiry was conducted regarding the above said land. The ACB submitted its report. In the report it is stated that role played by forest officer is highly suspicious. Therefore criminal/civil wrong done by Shri Dayal was main reason to loose the valuable lands.

Charge II

In the year 1990-91 the metalling of the

road work (in guise of repair of old/existing road) was taken up with the permission of Forest Department to whom it was represented through Executive Engineer (B.M.Oberai) letter dated 26-2-1990 to the Tahsildar (Shri Deshpande) who on 31-3-1990 confirmed the road existed prior to 1980. It is relevant to add that when the new road was laid in 1987-88, no such permission was taken, under the Forest (Conservation) Act,1980 and rules framed thereunder. The prior approval of the Government of India is necessary for the new road in the reserved forest but not for the repair of the old road. However, the proposal for the year 1987-88 had clearly stated it was new road. But on 3/9/1990 metalling of the road is permitted by DFO Shri R.M.Dayal, only in order to give wrongful gain to the party against the provision of Forest (Conservation) Act 1980.

4. The respondent approached Central Administrative Tribunal for quashing the aforesaid charges. His original application was registered as O.A.No.492 of 2001. By the order dated 15th October, 2001 the Central Administrative Tribunal disposed of the

original application with the following directions :-

> The respondents shall proceed in the aforesaid disciplinary proceedings initiated against the applicant vice charge memo dt.3.3.2001 as expeditiously as possible and in accordance with the provisions of law, rules and instructions. They shall complete the enquiry within nine months from the date of receipt of copy of this order. We make it clear that this period shall include the period required to take the necessary ad vice or decision from the UPSC in accordance with the relevant Rules. We further make it clear that the applicant shall also fuly co-operate to complete the disciplinary enquiry initiated against him in accordance with the relevant Rules ;
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> The applicant has submitted that the charge memo dt.3.3.2001 has been inordinately delayed with respect to imputations of misconduct and charges levelled against him which are more than 13 years. In the particular facts and circumstances of the case it is clarified that in case the respondents do not

complete the disciplinary proceedings and pass the final orders within the aforesaid period, the same shall be deemed to have abated.

5. The disciplinary proceedings could not be concluded within time granted by the Central Administrative Tribunal. The Miscellaneous Petition was made before the Central Administrative Tribunal for extension of time. By order dated 11.11.2002, the time for conclusion of disciplinary proceeding was extended upto 24.3.2002.

6. The disciplinary proceedings against the respondent could not be completed within the extended time. Yet again the Miscellaneous Application was made before the Central Administrative Tribunal by the present petitioners for extension of time for conclusion of the disciplinary proceeding. By the order dated 28.4.2003, the Central Administrative Tribunal extended the time for conclusion of disciplinary proceeding by a further period of 3 months, making it clear that if the disciplinary proceeding is not completed as directed, no further time will be given.

7. The disciplinary proceedings against the

respondent were yet not completed. The present petitioners moved to Central Administrative Tribunal for further extension of time for conclusion of disciplinary proceedings against the respondent. By the order dated 18.8.2003 the Central Administrative Tribunal declined to grant further extension of time.

8. Aggrieved thereby, the present Writ petition has been filed.

9. It is true that the Central Administrative Tribunal had been quite considerate in extending time for conclusion of disciplinary proceedings from time to time. It needs no elaboratation that the enquiry officer ought to have concluded the enquiry against the respondent, if not within the time granted in the order dated 15.10.2001 then atleast on or before the expiry of the last day of the extended period. There surely is lack of urgency on the part of the petitioners and the enquiry officer in not ensuring conclusion of disciplinary proceedings against the respondent within the time lastly extended by the Central Administrative Tribunal. However, looking to the gravity of charges of mis-conduct levelled against the respondent in respect of which disciplinary enquiry has been initiated, we are of the view that the enquiry must be taken to logical conclusion and

despite lack of urgency shown by the enquiry officer and the present petitioners as well, one more opportunity by way of last and final chance deserves to be given for conclusion of the disciplinary proceedings against the respondent. The respondent is in service and though he has been inconvenienced to some extent by the petitioners in not concluding the disciplinary enquiry against him within the time extended by Central Administrative Tribunal, yet we are of the view that no grave prejudice shall be caused to the respondent if one more opportunity is granted for concluding the enquiry against the delinquent.

10. We, accordingly, dispose of the said Writ petition by following order :-

O R D E R

1. The petitioner no.1 shall ensure that their witnesses viz. (1) Mr.S.K.Bagve, (2) Mr.M.L.Thakur, (3) Mr.M.H.Ketkar, and (4) Mr.R.K.Das appear before the enquiry officer on 25.4.2005.

2. The enquiry officer may examine the aforesaid witnesses on that day or fix any other date for recording their evidence. However the enquiry officer will ensure that the evidence of the

aforesaid four witnesses is concluded as early as possible and in no case later than one month from 25.4.2005. In any case the evidence of the State shall stand closed automatically on expiry of one month from 25.4.2005.

3. The respondent (the delinquent) shall then examine his witnesses on the date(s) that may be fixed by the enquiry officer. The enquiry officer, however, shall ensure that the evidence of the delinquent and his witnesses is over by 25.7.2005.

4. The enquiry officer shall then submit his report to the disciplinary authority as early as possible and in no case later than 10.8.2005.

5. The enquiry officer shall be personally liable for non-adherence of the calender set out above.

6. It is made clear that if enquiry report is not submitted by the enquiry officer to the disciplinary authority on or before 10.8.2005, the disciplinary proceedings against the respondent shall stand dropped and no further action shall be taken against the respondent pursuant to the charge-sheet dated 3.3.2001.

7. No costs.

(R.M.LODHA,J)

(R.S.MOHITE,J)